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he was willing to take, did not fix the time when plaintiff was to fix the quantity he desired, the law implied that he had a reasonable time within which to do so.

TRIAL—INSTRUCTIONS.

11. It is not error to refuse instructions stating principles embodied in instructions given.

SOUTH & W. RY. CO. v. COMMONWEALTH ex rel. FLANARY.

et als.

September 14, 1905.

[51 S. E. 824.]

APPEAL—QUESTIONS NOT RAISED AT TRIAL—JURISDICTION.

1. An objection that the court had no jurisdiction of the proceeding is available on appeal, though not made in the trial court.

QUO WARRANTO—RIGHT TO PROSECUTE—RAILROADS—CHARTER—NONCOMPLIANCE.

2. Va. Code 1904, pp. 1611, 1612, Secs. 3022-3024, authorize the award of a writ of *quo warranto* against a corporation not municipal for misuse or nonuse of its corporate privileges and franchises, either by the Attorney General or, in case of this refusal, by a private prosecutor; and section 1105e, cl. 30 (page 566), declares that all corporations, whether expiring by limitation or are otherwise dissolved, shall be continued for such length of time as may be necessary for the purpose of prosecuting and defending suits by or against them, and of enabling them gradually to settle their business. *Held*, that section 1313a, cl. 58 (page 733), declaring that if the works of any internal improvement company be not commenced and be completed within the time prescribed by law or by its charter, or if the works be completed and the company abandon them, etc., the state may proceed against such company by writ of *quo warranto*, etc., to forfeit its franchises and sell its property, should be construed as a limitation on the general act, and hence a writ of *quo warranto* on the relation of a private prosecutor could not be maintained to terminate the franchises of a railroad company for failing to construct its road in the time allowed.

[Ed. Note.—For cases in point, see vol. 41, Cent. Dig. Quo Warranto, Secs. 40, 41; vol. 44, Cent. Dig. Statutes, Secs. 302-305.]

BERRY'S EX'X v. FISHBURNE et al.

September 21, 1905.

[51 S. E. 827.]

VENDOR AND PURCHASER—QUANTITY—DEFICIENCY—ABATEMENT OF PRICE.

1. Where the agent of the vendors of certain land, in response to a direct inquiry of the vendee, represented that the tract contained 179 acres of land, and offered to have it surveyed, if desired, and the deed, after